

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

Kevin D. Anthony, individually,

Plaintiff,

v.

United States of America,

Defendant.

CASE NO. C19-5337-BJR

JOINT PRETRIAL STATEMENT

Pursuant to Paragraph VI of Judge Barbara J. Rothstein's March 6, 2020 Standing Order for all Civil Cases, the Plaintiff, Kevin D. Anthony, by and through his attorney of record, James J. Raffa, of James J. Raffa, *PLLC*, and the Defendant, the United States of America, by and through undersigned counsel of record, Tessa M. Gorman, Acting United States Attorney for the Western District of Washington, and by Kristen R. Vogel, Assistant United States Attorney for said District, submit the Joint Pretrial Statement.

1 **a) A Short, Concise Statement of The Case.**

2 Jurisdiction is vested in this court because Plaintiff Kevin Anthony's claims are brought
 3 pursuant to the Federal Tort Claims Act ("FTCA") against Defendant the United States of
 4 America. 28 U.S.C. §§ 1346(b), 2679(b)(1). The FTCA waives sovereign immunity for negligent
 5 or wrongful acts committed by a federal employee acting within the scope of his employment. 28
 6 U.S.C. §§ 1346(b), 2671, 2680.

7 On November 5, 2015, U.S. Army Ranger Specialist Jesse M. Suhanec overdosed on his
 8 prescribed Adderall, absented himself from Joint Base Lewis-McChord ("JBLM") just south of
 9 Tacoma, Washington, and shot Plaintiff Kevin D. Anthony, a civilian, multiple times while Mr.
 10 Anthony sat in his truck. While Mr. Anthony survived the attack, he was grievously injured and
 11 permanently disabled. Mr. Suhanec's actions constitute an intentional tort for which the United
 12 States cannot be held liable. 28 U.S.C. § 2680(h). However, Plaintiff sues the United States
 13 alleging that his injury was a result of the Army's negligence instead of Mr. Suhanec's intentional
 14 tort.

15 Before the Court is the issue of liability. Plaintiff alleges that Defendant United States is
 16 liable for his injuries and damages under the FTCA on the theory of Negligent Hiring because Mr.
 17 Suhanec claims to have been advised by his Army recruiter to lie about his disqualifying condition
 18 (self-mutilation scars on his left forearm) during his ascension process in the Army. Defendant
 19 denies that any Army recruiter instructed Mr. Suhanec to lie and further denies that scars on Mr.
 20 Suhanec's left forearm would make it foreseeable that he would overdose on prescribed medication
 21 more than four years later and shoot someone.

1 **b) Any Facts To Which The Parties Can Stipulate.**

2 The following facts are admitted by the parties:

- 3 1. Mr. Suhanec enlisted in the United States Army in the delayed
4 enlistment program on August 26, 2011.
- 5 2. Mr. Suhanec completed a required medical examination at the Military
6 Entrance Processing at Fort Dix, New Jersey on July 12, 2011.
- 7 3. Mr. Suhanec entered active-duty service on March 13, 2012 for a term
8 of four years.
- 9 4. On November 5, 2015, Mr. Suhanec took approximately 12-15 of his
10 prescribed Adderall medication.
- 11 5. On November 5, 2015, Mr. Suhanec took a privately-owned weapon
12 from the JBLM arms room without authority from either the owner of
13 the weapon or the company commander, absented himself from JBLM,
14 and shot Mr. Anthony.

11 **c) Designation Of Depositions (No Objections).**

12 The parties have designated portions of Mr. Suhanec's deposition testimony and there are
13 no objections.

14 **d) Itemization Of Damages and A Summary of Other Relief Requested.**

15 This case has been bifurcated and accordingly the parties do not present an itemization of
16 damages. Plaintiff requests that this Court find the United States 100% liable for his injuries. The
17 United States requests that this Court find that it is not liable for Plaintiff's injuries. Alternatively,
18 to the extent the Court finds the United States liable for Plaintiff's injuries, the United States
19 requests that its liability be reduced by the percentage of fault attributable to Mr. Suhanec pursuant
20 to RCW 4.22.070.

21 **e) A Summary of Any Pending Motions *In Limine* And The Opposition Thereto.**

22 Not applicable.

23

1 **f) Whether Settlement Negotiations Have Been or Would Be Beneficial.**

2 Settlement discussions have not been fruitful.

3 **g) An Updated Estimate of The Length of Trial.**

4 The parties estimate a 2–3-day bench trial.

5 **h) Schedule Of Witnesses, Brief Summary of Expected Testimony (No**
6 **Objections).**

7 Plaintiff will call the following fact witnesses:

- 8 1. Jesse M. Suhanec. Mr. Suhanec was the enlistee who lied during
9 the recruiting process and shot Mr. Anthony. Mr. Suhanec will
10 be called to testify as to the fact and circumstances in his life
 which, if disclosed during the enlistment process, would have
 prevented his enlistment. He will also testify as to the facts and
 circumstances of his recruitment into the Army.

11 Defendant will call the following fact witnesses:

- 12 1. Jennifer Yanick. Ms. Yanick was one of Mr. Suhanec's Army
13 recruiters. Ms. Yanick will be called to testify as to the facts and
 circumstances of Mr. Suhanec's recruitment.
- 14 2. Master Sergeant (MSG) Daniel Hollis. MSG Hollis was one of
15 Mr. Suhanec's Army recruiters. MSG Hollis will be called to
16 testify as to the facts and circumstances of Mr. Suhanec's
 recruitment.

17 Defendant will call the following expert witness:

- 18 1. William W. Adams, MD. Dr. Adams is a board-certified expert
19 in the field of General Psychiatry and Addiction Medicine. Dr.
 Adams will testify regarding Mr. Suhanec's behavior on
 November 5, 2015 as it relates to his allegedly disclosed pre-
 military psychiatric history.

20 Anticipated Schedule of Witnesses:

21 Tuesday, October 12, 2021:

22 9:30 am – Jesse Suhanec testifies after openings
23 1:30 pm – continue with Suhanec testimony
 3:30 pm – Daniel Hollis

1 Wednesday, October 13, 2021

2 9:30 am – Jennifer Yanick
3 11 am – Dr. William W. Adams
4 Closings in the afternoon

5 Thursday, October 12, 2021

6 9:30 am – Reserved, in the event testimony goes longer than expected.

7 **i) List of Exhibits (Admissibility Stipulated).**

8 Joint Exhibits:

- 9 J1 DD Forms 2807-2, dated 2/16/2011 and 7/11/2011 (USAO_000815-000825)
10 J2 USMEPCOM Form 40-8-E, dated 7/12/2011 (USAO_000828)
11 J3 USMEPCOM Form 40-1-15-1-E, dated 7/12/2011 (USAO_000812-000813)
12 J4 DD Form 2808, dated 7/12/2011 (USAO_000804-000807)
13 J5 DD Form 2807-1, dated 7/12/2011 (USAO_000808-000811)
14 J6 USMEPCOM Hearing Testing HT Wizard, dated 7/12/2011 (USAO_000814)
15 J7 USMEPCOM Form 601-23-5-R-E, dated 3/13/2012 (USAO_000826-000827)

16 Plaintiff's Exhibits:

- 17 P1 USAREC Regulation 601-45 (Effective 30 July 2009)
18 P2 DoD 6130.03 Instruction (Effective April 28, 2010, Incorporating Change 1,
19 September 13, 2011)
20 P3 AR 40-501 (Effective 14 December 2007)

21 Defendant's Exhibits:

- 22 D1 Suhanec Statement for Enlistment, dated 8/26/2011 (USAO_001009-001016)
23 D2 Suhanec Statement for Enlistment, dated 3/13/2012 (USAO_001026-001033)
D3 Curriculum Vitae of William W. Adams, MD

1 **j) Proposed Jury Instructions.**

2 Not applicable.

3 **k) Proposed Verdict Forms.**

4 Not applicable.

5 **l) Proposed Voir Dire Questions.**

6 Not applicable.

7
8 DATED this 13th day of September, 2021.

9
10 Respectfully submitted,

11 TESSA M. GORMAN
12 Acting United States Attorney

13 /s/ Kristen R. Vogel
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